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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 180

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, VIRGIL PEAY, JOHN KENDALL, GEORGE ABELL, NEWTON STUCKER, SYLVESTER DAVIDSON AND ELVIN PEAY, Petitioners

v.

RISS AND COMPANY, INC., Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on January 31, 1962.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 298 F2d 341, and is attached hereto, together with the judgment and the order denying the petition for rehearing, as Appendix "A". The Order of the United States District Court for the Western District of Kentucky, granting respondent's motion to dismiss the complaint, is unreported and is attached hereto as Appendix "B".

JURISDICTION

The judgment of the Court of Appeals was entered on January 31, 1962, and a Petition for Rehearing was denied on March 21, 1962, making such judgment final.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether federal district courts have jurisdiction, under § 301 of the Labor-Management Relations Act, of an action brought by a labor organization against an employer to enforce an award rendered by a bipartisan grievance committee pursuant to a collective bargaining agreement between the foregoing parties, whereby the said committee is constituted as the last step in the grievance procedure and its decisions are designated as "final".

2. Whether the federal district courts are deprived of jurisdiction to enforce the award, as aforesaid, on the sole ground that the tangible benefit of said award accrues to individual employees who are represented by the plaintiff-labor organization.

3. Whether, in the foregoing context, a federal court of appeals exceeds the bounds of the permissible scope of review by making a decision on the merits of the grievance contrary to that of the grievance committee and, in so doing, resolving disputed facts without the benefit of evidence or argument by the parties.

STATUTES INVOLVED

Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. Sec. 185, provides as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter,

or between any such labor organizations, may be brought in any district court of the United States, having jurisdiction of the parties, without respect to the amount of controversy or without regard to the citizenship of the parties."

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT

A. The Facts

Petitioner, General Drivers, Warehousemen and Helpers, Local Union No. 89 (hereinafter called Local 89), is a labor organization affiliated with the International Brotherhood of Teamsters, having its principal office in Louisville, Kentucky. The individual petitioners are members of said Local 89 and employees of respondent Riss and Company, Inc. (R., App. 2a).[1]

The respondent, Riss and Company, Inc. (hereinafter called Riss), is a Delaware corporation engaged in the interstate transportation of freight by motor vehicle, maintaining a freight terminal in Louisville, Kentucky. (R., App. 3a).

At all times material herein, there was in full force and effect a collective bargaining agreement between Local 89

[1] The designation "(R., App.)" has reference to the Appendix for Plaintiffs-Appellants as it appears in the certified record.

and Riss, governing the wages, hours and working conditions of the employees of Riss at the Louisville terminal. (R., App. 3a). Article VIII, Section 1 of said agreement provides that "there shall be no strike, lockout, tie-up, or legal proceedings" as to any controversy without prior resort to the grievance machinery of the agreement. Under Articles VII and VIII, the grievance procedure consists of several "steps," the last one being resort to a Joint Area Cartage Committee—comprised of an equal number of employer and union representatives—"for final decision." (R., App. 9a). Article IX of the agreement protects the employees against discharge for failure to cross a picket line. (R., App. 4a).

On or about January 25, 1960, during the course of a labor dispute between Riss and Teamsters Local 107 of Philadelphia, Pennsylvania, Local 107 placed pickets at the Riss terminal in Louisville. The six individual petitioners herein, employees of Riss at Louisville, chose to respect and did respect the said picket line. On February 15, 1960, the six employees reported for work, and Riss refused to permit them to return to work. Thereupon, they filed grievances against Riss, seeking reinstatement and back pay, pursuant to the aforementioned provisions of the collective bargaining agreement. (R., App. 3a, 4a).

The grievances were processed through the various steps of the grievance procedure, with full participation by both parties at each and every step. At the terminal point of that process, the Joint Area Cartage Committee rendered a decision and award, directing that the six individuals be reinstated with back pay. However, Riss refused and continues to refuse to abide by that decision. (R., App. 4a).

B. The Proceedings Below

Petitioners thereupon brought suit against Riss to enforce the award in the United States District Court for

the Western District of Kentucky, invoking the jurisdiction of that court under § 301 of the Labor-Management Relations Act (29 U.S.C. 185). At a pre-trial conference held on February 2, 1961, and upon the motion of Riss to dismiss, the court sustained the motion and ordered the complaint dismissed for lack of jurisdiction on the authority of *Westinghouse Salaried Employees v. Westinghouse Electric Corporation*, 348 U.S. 437 (1955). (App. "B").

Upon appeal to the United States Court of Appeals for the Sixth Circuit, that court affirmed the Order of the district court on three grounds:

First, the order of the Joint Area Cartage Committee was not "an arbitration award" that could be enforced by the courts and, therefore, "recent pronouncements of the Supreme Court with reference to arbitration are not controlling here;"

Second, upon that court's construction of the contract, the complaint did not state a cause of action;

Third, since "the purpose of the action is to recover for the individual plaintiffs lost wages together with incidental benefits to the Union based on the payment of wages to employees," the court is deprived of jurisdiction by *Westinghouse, supra.* (App. "A").

A Petition for Rehearing was denied on March 21, 1962. (App. "A").[2]

REASONS FOR GRANTING THE WRIT

I

INTRODUCTION

The court below has decided important and substantial federal questions concerning the scope and application

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[2] Each and every one of the Supreme Court cases cited hereafter was brought to the attention of the court below in the petitioners' brief and/or petition for rehearing.

of Section 301, in a manner inconsistant with decisions of this Court and with Congressional policy. Its holding that the decision of the Joint Area Grievance Committee was not an "arbitration award" and therefore unenforceable under § 301 has the effect of limiting the application and protection of that Section to grievance procedures which fit that court's conception of "arbitration." This result was hardly foreseen by Congress when it granted jurisdiction to the Federal Courts to enforce "contracts" between management and labor, according to their terms, and regardless of whether the terms related to a grievance procedure, arbitration, or a substantive matter. Recent decisions of this Court made it clear that the doors of the Federal Courts were to be opened for the enforcement of agreements between the parties pertaining to the settlement of their grievances, regardless of what those grievance procedures were called. *Retail Clerks v. Lion Dry Goods, Inc.*, 49 LRRM 2670 (1962). Moreover, the limitation which the court below placed upon § 301 would in effect upset a large number of collective bargaining agreements which contain grievance procedures not culminating in decision by a neutral umpire and which have permitted the peaceful and amicable settlement of disputes between labor and management for many years.

The same effects are produced by the holding of the court below that § 301 is inapplicable where the purpose of the particular grievance, processed through the grievance procedure pursuant to the agreement of the parties, is to restore to individual employees that which they had lost by the employer's breach of the contract. Thus, according to that court, the very basic promise of the employer to abide by decisions of the grievance machinery—which promise underlies the power and right of the Union to administer the entire contract—is unenforceable in the courts. This holding, too, fails to recognize the important

decisions of this Court in the § 301 area. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960).

Finally, the court below decided the grievance on its merits, upon its own construction of the contract, without the benefit of evidence or argument on the issue. In so doing, the court not only departed from the accepted and usual course of judicial proceedings but disregarded the clearly established standards of review announced by this Court in the 1960 *Steelworkers* cases, *supra*.

As elaborated below, the importance of this decision to the administration of § 301, harmony in the field of labor management relations, adherence to the mandate of this Court, and the proper division of function between the grievance machinery established by the parties and the federal courts, justifies the granting of this petition.

II

THE DECISION OF THE COURT BELOW THAT THE AWARD OF THE JOINT AREA CARTAGE COMMITTEE IS NOT AN "ARBITRATION AWARD" AND THEREFORE UNENFORCEABLE UNDER § 301 IS INCONSISTENT WITH DECISIONS OF THIS COURT AND WITH THE PLAIN MEANING OF THE STATUTE.

The parties in the instant case have chosen a method for settling their grievances whereby bipartisan committees determine controversies importantly affecting the employment relationship. Resort to these committees is com-

pulsory and their decisions are final and binding.[3] In case of deadlock, the dispute may be submitted to an umpire upon a majority vote of the appropriate committee. But here there was no such deadlock. The Joint Area Cartage Committee, composed of representatives equally chosen by the employer and the union, decided the dispute in favor of the union with full participation by both parties.

If that which is to be enforced under § 301 must be "arbitration" or an "arbitration award", as intimated by the court below, the foregoing procedure fully qualifies.[4] Moreover, if the decision below is intended to require resort to an *outside umpire* as a prerequisite to § 301 jurisdiction, it seriously undermines the force of logic and the policies underlying that Section. For there is nothing in the Agreement, or in practice, which suggests that the method chosen by the parties is less capable of maintaining labor peace between them than the process envisioned by that court. If anything, the parties would have greater confidence in their own representatives' personal judgment and knowl-

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[3] The contrary "fact finding" of the Court below contradicts the express terms of the agreement. Article VIII, Section 1 of the contract provides that disputes "shall" be taken through the grievance procedure. That same Section forbids resort to a strike or legal proceedings "without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise". Finally, Article VIII, Section 1(e) provides that matters pertaining to the interpretation of the contract "shall" be referred "for final decision" to the Joint Area Cartage Committee. In any event, this question should have been decided by the district court, on the basis of record evidence, rather than by the court below.

[4] "ARBITRATION. The submission for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement." Black's Law Dictionary, 4th ed., p. 134 (West Publishing Co. 1957).

edge of the common law of the shop than in the knowledge and judgment of an outside arbitrator.[5]

In any event, the decisions of this Court, including their many references to legislative history, as well as the plain meaning of § 301, demonstrate most emphatically that the federal courts may and should enforce awards rendered pursuant to the grievance machinery or other methods of settlement agreed upon by the parties—regardless of what the methods so chosen may be called. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960). Thus, in *Lincoln Mills* the Court pointed to a House Report on § 301 which, so far as relevant here, stated: "When parties have agreed on *a procedure* for settling their differences, and the agreement is in effect, they will be required to follow the procedure . . . Most agreements provide procedures for settling grievances, *generally* including some form of arbitration as the last step." H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 21 (emphasis supplied). In the same opinion, Justice Douglas stated that the Norris-LaGuardia Act does not preclude enforcement of arbitration agreements because that Act

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[5] It is significant that in *Denver-Chicago Trucking Co.*, 132 NLRB No. 123, 48 LRRM 1524 (1961), the NLRB honored a decision of the Joint State Cartage Committee, which is a part of the grievance procedure of the contract presently before us, to the same extent that it had previously honored decisions of arbitrators. Speaking of the instant contract, the Board said: "We note that the grievance procedure had been followed by the parties for 18 years and that it presumably satisfied both the employers and the unions as serving its purpose . . . We do not agree with the Trial Examiner that it is essential that a public member sit on grievance panels . . ." (48 LRRM at 1526 and fn. 6).

indicates "a congressional policy toward settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make 'every reasonable effort' to settle the dispute by *negotiation, mediation, or 'voluntary arbitration'*." (353 U.S. at 458) (emphasis supplied). In *American Mfg. Co.*, addressing itself to the Sixth Circuit, the Court stated:

> "Section 203(d) of the Labor Management Relations Act, 1947, 61 State (sic) 154, 29 U.S.C. 173(d), states, 'Final adjustment *by a method agreed upon by the parties* is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . .' *That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.*" (363 U.S. at 566) (emphasis supplied).

Finally, in the very recent decision of *Retail Clerks v. Lion Dry Goods, Inc.*, 49 LRRM 2670 (1962), this Court reversed the opinion of the Sixth Circuit that a "Statement of Understanding" between the parties was not enforceable under § 301. On that occasion, it was the view of the court below that § 301 applied solely to "collective bargaining agreements." In disagreement with that view, this Court stated the following:

> "The words of § 301(a) require no such narrow construction as is suggested; rather, they negate it . . . The section says 'contracts' . . . If this kind of strike settlement were not enforceable under § 301(a), responsible and stable labor relations would suffer, and the attainment of the labor policy objective of minimizing disruption of interstate commerce would be made more difficult . . . It is enough that this is clearly an agreement between employers and labor organizations significant to the maintenance of labor peace between them. It came into being as a means satisfactory to both sides for terminating a protracted strike and labor dispute. Its terms

> affect the working conditions of the employees of both respondents . . . It resolved a controversy arising out of, and importantly and directly affecting, the employment relationship. Plainly it falls within § 301(a)." (49 LRRM at 2673-2674).

The lesson is clear, for the Section indeed says "contracts." Suffice it to say that the method of settling disputes in question here constitutes the agreement of the parties—it is their contract. And it has achieved, and continues to achieve, the same worthy objectives outlined by the Court in *Lion Dry Goods*. "Plainly it falls within § 301(a)."

Despite the above, the Sixth Circuit has again attempted to narrow the application of § 301. Thus, the parties are now told by that court that the satisfactory grievance procedure contained in their agreements—a procedure that has permitted an amicable relationship for 18 years or more—is no longer a "contract" between them and is unenforceable under § 301. The effect of the decision upon labor management relations is certain to be adverse. Many collective bargaining agreements across the nation contain similar methods for the settlement of disputes. Whether the reason for the employment of these particular procedures be the parties' jealousy of their sovereignty, greater confidence in their own representatives; the great expense of submission to an outside arbitrator, or a belief that the settlement of disputes between the parties themselves breeds an atmosphere of greater cooperation, the parties thereto have proceeded on the assumption that they are enforceable as are any other contracts. In practical terms, the decision below would now coerce these persons into revising their agreements to provide for a procedure specially favored by the court below, on pain of being barred from the courthouse door. As to those agreements that are not so revised, the final steps in the grievance procedure would no longer be amicable private or judicial

settlement,[6] but interruptions in production, strikes, lockouts and general unrest and suspicion.

The importance of the federal question decided by the court below in terms of the administration of § 301, the adverse effect of the decision upon the field of labor-management relations, and its complete inconsistency with decisions of this Court and with the plain meaning of the statute, combine to recommend intervention by this Court.

III

THE COURT'S RELIANCE ON THE WESTINGHOUSE CASE IS IN DIRECT CONFLICT WITH THE DECISIONS OF THIS COURT.

In light of the above, the court's reliance on the authority of *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, was equally misplaced.

The *Westinghouse* case did not, as does this one, involve the enforcement of a grievance procedure or a final award rendered pursuant thereto. It was simply an action brought by the union, to recover wages owing to individual employees—an action that could have been maintained by the employees themselves. To Justices Frankfurter, Burton and Minton, the action signalled "constitutional difficulties" and a "potential flood of grievances". The Chief Justice and Justice Clark viewed the claim as "uniquely personal" to the employees. Justice Reed stated that the claim arose

[6] Note that by providing, in Article VIII, that there shall be no "legal proceedings" without prior resort to the grievance procedure, the parties themselves contemplated that the decision produced by resort to that procedure could be legally enforced in the courts.

"from separate hiring contracts between the employer and each employee." Justices Douglas and Black dissented:

> "We make mountains out of molehills in not allowing the union to be the suing as well as the bargaining agency for its members as respects matters involving the construction and enforcement of the collective bargaining agreement." (348 U.S. at 465, 466).[7]

Thus was drawn the distinction between uniquely personal rights arising out of individual hiring contracts, on the one hand, and rights and obligations "running to the union" on the other.

The distinction was clarified in later decisions of the Court. *Lincoln Mills*, for example, was a union action to enforce an agreement to arbitrate a grievance which, at the time of the decision, amounted to nothing more than back wages owing to individual employees. Justice Douglas, for the Court, distinguished *Westinghouse*:

> "The basic question concerned the standing of the union

[7] In line with the dissenting opinion in *Westinghouse*, both professors Cox and Gregory favor giving the union "control over all claims arising under the collective agreement". Cox, "The Legal Nature of Collective Bargaining Agreements," 57 Mich. L. Rev. 1, 24 (1958); Gregory, "The Law of the Collective Agreement," 57 Mich. L. Rev. 635, 642-643 (1959). Now that *Lincoln Mills, supra*, has disposed of the constitutional problems underlying much of *Westinghouse*, these views should appear much more acceptable to this Court. See also § 301 of Taft-Hartley ("Any such labor organization may sue or be sued as an entity and on behalf of the employees whom it represents in the courts of the United States."); and *cf., Charles Dowd Box Co. v. Courtney*, 49 LRRM 2619 (1962), wherein this Court—although not squarely faced with the application of *Westinghouse*—affirmed a decision of the Supreme Judicial Court of Massachusetts approving an award of back wages to employees, in a suit brought on their behalf under § 301, without the interposition of a grievance machinery.

to sue and recover on those individual employment contracts. The question here concerns the right of the union to enforce the agreement to arbitrate which it has made with the employer." (353 U.S. at 456, fn. 6).

In a concurring opinion, Justices Burton and Harlan wrote:

"The District Court had jurisdiction over the action since it involved an obligation running to a union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a union." (at 760).

Concurring in *American Mfg. Co., Warrior and Gulf Nav. Co.*, and *Enterprise Corp.*, where this Court ordered the enforcement of arbitration agreements and awards thereof pursuant to § 301, Justice Brennan—joined by Justices Harlan and Frankfurter—stated the issue as follows:

"The issue concerns the enforcement of but one promise—the promise to arbitrate in the context of an agreement dealing with a particular subject matter, the industrial relations between employers and employees . . . And I emphasize this, for the arbitration promise is itself a contract." (363 U.S. 569-570).

In the foregoing fashion, the Court has made it abundantly clear that union actions to enforce agreements to arbitrate and awards pursuant to such agreements are enforceable under § 301, despite the fact that "the purpose of the action is to recover for the individual plaintiffs lost wages". The union's participation in the instant proceedings is of that nature. It is attempting to enforce a promise made directly to the union—the promise to abide by awards rendered by a bipartisan committee at the final stage of the grievance procedure. It is a very basic promise—the only one in the contract that governs the administration and interpretation of each and every one of the remaining provisions of the contract. The sole primary parties to this contractual obligation are the employer and the union.

IV

THE COURT'S RELIANCE ON THE WESTINGHOUSE CASE IS INCONSISTENT WITH THE DECISIONS OF OTHER CIRCUIT COURTS.

In applying *Westinghouse* in this context, the decision of the court below was inconsistent not only with the mandate of this Court, but with the decisions of other circuit courts as well. *Item Co. v. N.O. Newspaper Guild*, 256 F2d 855 (5th Cir. 1958), cert. den. 358 U.S. 867 (1958); *Textile Workers Union v. Cone Mills Corp.*, 268 F2d 920 (4th Cir. 1959), cert. den. 361 U.S. 886 (1959); *American Brake Shoe Co. v. Auto Workers Local 149*, 285 F2d 869 (7th Cir. 1961).[5]

This inconsistency can only be, and should be, resolved by this Court.

V

IN DECIDING THE GRIEVANCE ON ITS MERITS, THE COURT BELOW NOT ONLY DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BUT DISREGARDED THE CLEARLY ESTABLISHED STANDARDS OF RE-

[5] Conceivably, the court's reliance on *Westinghouse* might be dependent upon its earlier finding that the Committee's decision was not an "arbitration award" and therefore unenforceable. For in *A. L. Kornman Co. v. Amalgamated Clothing Workers*, 264 F2d 733 (6th Cir.), cert. den. 361 U.S. 819, that court apparently followed the "arbitration" decisions of this Court—albeit with a strong dissent by Judge Miller. However, the court's opinion in subsequent cases—including this one—leads us to believe that *Westinghouse* is being applied as a separate and independent ground for dismissal of the action. Cf., *Communications Workers v. The Ohio Bell Telephone Co.*, 160 F. Supp. 822, aff. 265 F2d 221 (6th Cir.), cert. den. 361 U.S. 847.

VIEW ANNOUNCED BY THIS COURT IN § 301 CASES.

A final ground for the conclusion of the court below was its decision, *on the merits*, that plaintiffs were not entitled to reinstatement and back pay. This decision is contrary to that of the Joint Area Cartage Committee, and plainly in conflict with the following provision of the contract:

> "It shall not be a violation of this Contract and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a Union or refuse to handle unfair goods." (Art. IX, R., App. 4a).

The court arrived at its conclusion by an independent interpretation of the contract. In particular, the court relied on a contract clause that provides a narrow exception to the "no strike" clause—having nothing to do with discharge—and concluded that it "must" be read together with the provision regulating the right to discharge. The result was the court's opinion "that the complaint does not contain facts which would show that the plaintiffs were warranted under the contract to leave their jobs on January 25th." In effect, the holding assumes certain facts that may be very much in dispute between the parties: first, that the foregoing clause dealing with the right to strike was intended by the parties to affect the right to discharge; second, that individual refusals to cross a picket line may be equated with a "strike," within the meaning of that section; third, that Local 89 was in fact engaged in such a "strike" at the time in question; and fourth, that the Union engaged in such "strike" without having gone through the grievance procedure. These crucial "fact findings" were made without the benefit of evidence or argument in the courts below. In fact, the only ground relied on by the District Court for dismissal of the complaint

was lack of jurisdiction. Nor was this construction of the contract suggested by the respondent in its brief or argument to the court below. Had petitioners been timely warned of the *matter of defense* now relied on by the court in respondent's behalf, they undoubtedly would have been in the position to submit evidence and argument on the point or to move to amend the complaint. But such opportunity was denied absolutely. In this respect, the court below, has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

In addition, said decision on the merits of the dispute that had already been decided by the committee, exceeds the bounds of the limited role of the courts in cases arising under § 301, as clearly defined by this Court. In *American Mfg. Co., supra*, the Court reversed a similar decision of the Sixth Circuit that a grievance of which arbitration was sought was frivolous and not subject to arbitration. During the course of the opinion, this Court took great pains to examine the relationship between the arbitrator and the judge in a § 301 context:

> "The collective agreement requires arbitration of claims that courts might be unwilling to entertain. In the context of the plan or industry the grievance may assume proportions of which judges are ignorant. Yet, the agreement is to submit all grievances to arbitration, not merely those that a court may deem to be meritorious . . . The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator . . . Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator . . . The courts, therefore, have no business weighing the merits of the grievance . . ." (363 U.S. at 567-568).

In *Enterprise Corp., supra*, the Court delineated the function of the courts upon review of an arbitration award already rendered:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." (363 U.S. at 596).
>
> ". . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." (363 U.S. at 599).

But in this instance, too, the admonition of this Court went unheeded. The merits of the dispute were precisely that which the court below determined. Its own construction of the contract, as well as its final conclusion, differed from that of the Committee—whose construction and decision had been "bargained for" by the parties. Absent the benefit of evidence or argument, the court determined the issue. And it did so without so much as paying lip-service to the narrow standard of review promulgated by this Court in *Enterprise*—to wit, whether it is "apparent" that the decision of the Committee went beyond the submission. (363 U.S. at 598).

In view of the court's departure from the accepted and usual course of judicial proceedings and its disregard of the standards of review established by this Court, its decision should not be permitted to stand.

CONCLUSION

It is respectfully submitted that, for the reasons asserted

bove, this Petition for a Writ of Certiorari should be
ranted.

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APPENDIX A

NO. 14534

United States Court of Appeals

FOR THE SIXTH CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL UNION NO. 89, VIRGIL PEAY, JOHN KENDALL, GEORGE ABELL, NEWTON STUCKER, SYLVESTER DAVIDSON AND ELVIN PEAY,

Plaintiffs-Appellants,

v.

RISS AND COMPANY, INC.,

Defendant-Appellee.

} APPEAL from the United States District Court for the Western District of Kentucky, at Louisville, Kentucky.

Decided January 31, 1962.

Before: MARTIN and CECIL, Circuit Judges, and DARR, Senior District Judge.

CECIL, Circuit Judge. This is an appeal from an order of the United States District Court for the Western District of Kentucky dismissing the complaint of the plaintiffs-appellants for want of jurisdiction in the court to hear and determine the issues presented by the complaint.

It appears from the record in the trial court that the question of jurisdiction was considered by the trial judge at a pretrial conference, at which counsel for all parties were present. From the record no evidence was taken and

there was no stipulation of facts. The order of dismissal was made upon defendant-appellee's motion at the conference.

The question now before this Court is whether it is apparent from the face of the complaint that it did not state a cause of action or that the trial court lacked jurisdiction to determine the questions presented by it.

The plaintiffs in the action are General Drivers, Warehousemen and Helpers, Local Union No. 89, and six individuals alleged to be employees of the defendant company. The defendant is a Delaware corporation engaged in the interstate transportation of freight by motor vehicle, as a common carrier, and maintains a freight terminal at Louisville, Kentucky. The action involves a contract between the plaintiff union and the defendant. Jurisdiction is claimed under section 301 of the National Labor Relations Act. (29 U.S.C. 185) A copy of the contract is attached to the complaint and made a part of it.

Article VII of the contract provides for a Joint Local Area Committee, a Joint State Cartage Committee and a Joint Area Cartage Committee whose functions are to settle disputes that cannot be settled between the Employer and the Local Union. Article VIII prescribes grievance procedure. The parties agree that there shall be no strikes, lockouts, tie-ups, etc., without first using all possible means of settlement. Disputes are first to be taken up with the employer and union and then to be processed through the above named committees. Subdivision (g) provides. ". . . failure to comply with any final decision, withdraws the benefits of Article VIII."

It is alleged in the complaint that the grievances of the individual plaintiffs were processed through the machinery provided for in Article VIII and that the Joint Area Cartage Committee ordered the defendant to reinstate them

with their seniority and pay them lost wages. It is further alleged that the defendant refused to carry out this order.

The procedure described in Article VIII is a grievance procedure. It is not an agreement for compulsory arbitration, in exchange for a no-strike or work stoppage clause. There is no finality to this grievance procedure. The facts of this case do not bring it under the principle of *Textile Workers' Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448. The order of the Joint Area Cartage Committee was not an arbitration award which could be enforced by the courts as was the case in *A. L. Korgman Co.* v. *Amalgamated Clothing Workers*, 264 F 2d 733, C.A. 6, cert. denied, 361 U.S. 819. Recent pronouncements of the Supreme Court with reference to arbitration are not controlling here. See *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 and *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574.

It is alleged in the complaint inter alia that, on or about January 25, 1960, pickets were placed at the defendant's place of business in Louisville, by a labor union of Philadelphia, Pennsylvania; that a labor dispute existed in Philadelphia between the Philadelphia union and the defendant; that the individual plaintiffs herein "chose to respect and did respect the picket line of said Philadelphia labor union"; that on February 15, 1960, the named plaintiffs reported for work and the defendant refused to let them resume work.

The plaintiffs seek reinstatement of the individual plaintiffs with seniority and lost pay from February 15, 1960.

The defendant claims that the individual plaintiffs violated the contract by leaving their jobs on January 25th. The plaintiffs point to a provision of Article IX of the contract which reads as follows: "It shall not be a violation of this contract and it shall not be cause for discharge if

any employee or employees refuse to go through the picket line of a union or refuse to handle unfair goods." This clause must be read with another clause of this Article. "The insistence by any Employer that his employee . . . go through a picket line after they have elected not to, *and if such refusal has been approved in writing by the responsible officials of the Central States Drivers Council*, shall be sufficient cause for an immediate strike of all such Employer's operations without any needs of the Union to go through the grievance procedure herein." (Emphasis added) There is no allegation in the complaint that the refusal to go through picket lines was given such approval.

It is our opinion that the complaint does not contain facts which would show that the plaintiffs were warranted under the contract to leave their jobs on January 25th.

Finally, it appears that the purpose of the action is to recover for the individual plaintiffs lost wages together with incidental benefits to the Union based on the payment of wages to employees. This we think brings the facts of this case within the ambit of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437.

As was said in that case, p. 461; "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one." See also *Communications Workers of America, AFL-CIO* v. *The Ohio Bell Telephone Co.*, 160 F. Supp. 822, affirmed 265 F. 2d 221, C.A. 6, cert. denied 361 U.S. 814.

The trial judge was right in dismissing the complaint and for the reasons stated herein the judgment of the District Court is affirmed.

JUDGMENT

January 31, 1962

APPEAL from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be heard on the transcript of the record from the United States District Court for the Western District of Kentucky, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for Entry:
/s/ LESTER L. CECIL
U.S. Circuit Judge

ORDER

March 21, 1962

Upon consideration of the petition for rehearing, it is hereby denied.

/s/ LESTER L. CECIL
Circuit Judge

APPENDIX B

ORDER

A pre-trial conference was held in chambers on February 2, 1961 and there appeared Mr. Ralph H. Logan, for the plaintiffs, and Mr. H. Bemis Lawrence, for the defendant.

The question of jurisdiction having been considered and it appearing that this action is controlled by Westinghouse Salaried Employees v. Westinghouse Electric Corporation, 348 U. S. 437, 99 L. Ed. 510, 75 S. Ct. 488 (1955),

It Is Ordered that the motion of the defendant, Riss and Company, Inc., to dismiss is sustained and the complaint dismissed.

/s/ HENRY L. BROOKS
United States District Judge.

February 2, 1961.

For the Plaintiffs:
MR. RALPH H. LOGAN
506 West Jefferson St.,
Louisville, Kentucky.

For the Defendant:
MR. H. BEMIS LAWRENCE,
1129 Kentucky Home Life Bldg.,
Louisville, Kentucky.

A Copy Attest,
MARTIN R. GLENN, *Clerk*
by LORAINE MILLER,
Deputy Clerk.